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OFFICE OF PETITIONS

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In re Patent No. 7,685,522 : DECISION ON REQUEST
Feuerman : FOR
Issue Date: March 23, 2010 : RECONSIDERATION OF
Application No. 10/700,829 : PATENT TERM ADJUSTMENT
Filed: November 3, 2003 : and
Atty Docket No.07844-612001 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "Letter Regarding Patent Term Adjustment", filed on May 17, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be reviewed for accuracy.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, ninety-two (1,092) days is **GRANTED to the extent indicated herein.**

On March 3, 2010, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 1,117 days. On May 17, 2010, applicants submitted the instant comment. Patentee discloses that patentee believes that the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed July 9, 2009, may be longer than appropriate. Specifically, patentee states:

The Patent Term Adjustment (PTA) calculation included in the Issue Notification mailed Mach 3, 2010, for the above-referenced application indicates the PTA is 1,117 days. This PTA appears to contain an error.

...Patentee directs the Office's attention to a supplemental response filed in October 2007, for which no

Applicant Delay was assessed.

Excerpt from "Letter Regarding Patent Term Adjustment", filed on May 17, 2010, p. 1.

Pursuant to 37 CFR 1.704(c)(8),

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date the supplemental reply or other such paper was filed.

A review of the application file record reveals that June 9, 2007, a non-final Office action was mailed to which patentee filed a response on September 21, 2007. On October 16, 2007, patentee filed a supplemental response to the non-final Office action in the form of an Interview Summary. There is no indication that the examiner expressly requested the Interview Summary to be filed. Pursuant to 37 CFR 1.704(c)(8), it is appropriate to enter a reduction to the patent term adjustment of 25 days beginning from the day after the date the initial reply was filed, September 22, 2007, and ending on the date the supplemental reply was filed October 16, 2007. Accordingly, the period of reduction to the patent term adjustment of 25 days for applicant delay pursuant to 37 CFR 1.704(c)(8) will be entered.

In view thereof, the revised patent term adjustment is **one thousand, ninety-two (1,092) days** (1,169 days of Office delay - 77 days of applicant delay).

Deposit account 06-1050 will be charged \$200.00 for the petition fee required by 37 CFR 1.18(e). No additional fees are due.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, ninety-two (1,092) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,685,522 B1

DATED : Mar. 23, 2010

INVENTOR(S) : Feuerman.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1117) days

Delete the phrase "by 1117 days" and insert – by 1092 days--